

PRESTON DuFAUCHARD  
California Corporations Commissioner  
ALAN S. WEINGER  
Acting Deputy Commissioner  
MARY ANN SMITH (CA BAR NO. 230943)  
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Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS  
OF THE STATE OF CALIFORNIA

In the Matter of	)	OAH CASE NO: 2011010361
	)	
THE CALIFORNIA CORPORATIONS	)	
COMMISSIONER,	)	STIPULATION TO ORDER BARRING
	)	DOUGLAS ELSWORTH WILSON FROM
Complainant,	)	ANY POSITION OF EMPLOYMENT,
v.	)	MANAGEMENT OR CONTROL OF ANY
	)	INVESTMENT ADVISER, BROKER-
ELSWORTH BERG CAPITAL	)	DEALER OR COMMODITY ADVISER
MANAGEMENT, LLC, WILLIAM BERG	)	PURSUANT TO CORPORATIONS CODE
SETTLES as an individual and DOUGLAS	)	SECTION 25232.1 AND ORDER IMPOSING
ELSWORTH WILSON, as an individual,	)	ANCILLIARY RELIEF
	)	
Respondents.	)	Date: July 25, 2011
	)	Time: 9:00 p.m.
	)	Place: 1350 Front Street, Ste. 3005
	)	San Diego, CA 92101

It is hereby stipulated and agreed by and between Respondents Elsworth Berg Capital Management and Douglas Elsworth Wilson (hereinafter "Respondents") and Complainant the California Corporations Commissioner ("Commissioner") as follows:

**RECITALS**

A. Douglas Elsworth Wilson ("Wilson") is the president of Elsworth Berg Capital Management, LLC (referred to as "Elsworth") (CRD #120003) which held an investment adviser certificate issued by the California Corporations Commissioner in October 2003. On November 4, 2010, the

Commissioner entered an order summarily revoking the investment adviser certificate of Elsworth pursuant to Corporations Code section 25242(c).

B. On November 4, 2010 the Commissioner issued a notice to Douglas Elsworth Wilson and William Berg Settles of the intention of the Commissioner to issue orders to permanently bar Douglas Elsworth Wilson ("Wilson") and William Berg Settles ("Settles") from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section 25232.1, and claim for ancillary relief pursuant to Corporations Code Section 25254. The Commissioner also issued an Accusation and Statement in Support of Notice of Intention to Issue orders on November 4, 2010.

C. Respondent Wilson issued a timely notice of defense and request for hearing, and waiving the statutory time provision for the hearing. The hearing was set for July 25, 2011 before the Office of Administrative Hearings in San Diego.

D. It is the intention and the desire of the parties at this time to resolve the matter without the need for a hearing.

THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the parties agree and stipulate as follows:

1. This Stipulation is entered into for the purpose of judicial economy and efficiency, and to avoid the expense of a hearing, and possible other court proceedings.

2. Wilson and Elsworth admit to the jurisdiction of the Department of Corporations over them and over the subject matter hereof. Wilson and Elsworth do not admit or deny the allegations contained in the Orders and Accusation referred to above and attached hereto as Exhibit A. However, if Wilson or Elsworth (i) apply to vacate the bar or judgment imposed by the orders contemplated herein; (ii) apply for any license under the Department of Corporations's current or future jurisdiction, or (iii) are the subjects of an action by the Commissioner to enforce the orders contemplated herein, then the allegations contained in the orders and accusation shall be admitted for the purpose of such application or enforcement proceedings. In the event that either Wilson or Elsworth become the subject of bankruptcy proceedings under title 11 of the United States Code, then neither Wilson nor Elsworth shall be deemed in such proceedings to have admitted or denied

1 the allegations contained in the Orders and Accusation referred to above and attached hereto as  
2 Exhibit A by virtue of this Stipulation.

3 3. Wilson and Elsworth hereby agree to the issuance by the Commissioner of a final order  
4 barring Douglas Elsworth Wilson from any position of employment, management or control of any  
5 investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code section  
6 25232.1, and imposing an order of restitution in the amount of \$298,689.55 against Wilson and  
7 Elsworth jointly and severally due and payable sixty (60) days from the date the final order is signed.  
8 A copy of the final order is attached hereto as Exhibit B.

9 4. Wilson and Elsworth agree to withdraw their notice of defense and request for hearing.

10 5. The parties hereby acknowledge and agree that this Stipulation is intended to constitute a  
11 full, final and complete resolution of this matter. The parties further acknowledge and agree that  
12 nothing contained in this Stipulation shall operate to limit the Commissioner's ability to  
13 assist any other agency, (county, state or federal) with any prosecution, administrative, civil or  
14 criminal, brought by any such agency against Wilson or Elsworth based upon any of the activities  
15 alleged in this matter or otherwise. This Stipulation shall not limit the ability of the Commissioner  
16 to bring any administrative or civil action to enforce compliance with the orders attached hereto or  
17 seek penalties for their violation.

18 6. Each of the parties represents, warrants, and agrees that it has received independent  
19 advice from its attorney(s) and/or representatives with respect to the advisability of executing this  
20 Stipulation.

21 7. Each of the parties represents, warrants, and agrees that in executing this Stipulation  
22 it has relied solely on the statements set forth herein and the advice of its own counsel and/or  
23 representative. Each of the parties further represents, warrants, and agrees that in executing this  
24 Stipulation it has placed no reliance on any statement, representation, or promise of any other party,  
25 or any other person or entity not expressly set forth herein, or upon the failure of any party or any  
26 other person or entity to make any statement, representation or disclosure of anything whatsoever.  
27 The parties have included this clause: (1) to preclude any claim that any party was in any way  
28 fraudulently induced to execute this Stipulation; and (2) to preclude the introduction of parol

evidence to vary, interpret, supplement, or contradict the terms of this Stipulation.

8. This Stipulation is the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the parties with respect to the subject matter hereof, and supercedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the parties, their respective representatives, and any other person or entity, with respect to the subject matter covered hereby.

9. In that the parties have had the opportunity to draft, review and edit the language of this Stipulation, no presumption for or against any party arising out of drafting all or any part of this Stipulation will be applied in any action relating to, connected, to, or involving this Stipulation. Accordingly, the parties waive the benefit of California Civil Code § 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

10. This Stipulation may be executed in one or more counterparts, each of which shall be an original but all of which, together, shall be deemed to constitute a single document.

11. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Stipulation.

PRESTON DUFAUCHARD  
California Corporations Commissioner

Dated: 7/22/11

By \_\_\_\_\_  
MARY ANN SMITH  
Senior Corporations Counsel

Dated: 7/22/2011

By \_\_\_\_\_  
DOUGLAS ELSWORTH WILSON, as an individual

Dated: 7/22/2011

By \_\_\_\_\_  
DOUGLAS ELSWORTH WILSON, President  
on behalf of Elsworth Berg Capital Management, LLC.